Single Bench

(1) (Cr.)

IN THE HIGH COURT OF JUDICATURE AT BILASPUR
[CHHATTISGARH]

W.P . NO. 85 /2005

P.R. No. 7/9/05 Presented by Sri Sapna Shastry dated 7/9/05

Attested 7/9/05

PETITIONER : Suraj Lal Daheriya, Son of Bharosa Daheriya, aged 42 years, Sub Engineer, Water Resources Department, Rajnandgaon (C.G.), R/o. New Adarsh Nagar, Zone-I, Road-I, Plot no.33, Borsi Road, Durg (C.G.)

VERSUS

RESPONDENTS

A.P.(S) amendment incorporated as per C.O. dt. 24/10/05 Shailja 6/10/05

1) State of ~~C.G.~~ M.P. through Secretary, Water resources department, Bhopal (M.P.)

2) State of Chhattisgarh, through Secretary Water Resources Department, Raipur (C.G.)

3) Engineering in chief, Water Resources Department, Vindhyachal Bhawan, Bhopal (M.P.)

4) Engineering in chief, Water Resources Department, D.K.S. Bhawan, Raipur C.G.

5) Chief Engineer, Banganga basis Water Resources Department, Seoni (M.P.)

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सहायक आयुक्त 8/10/05 बिलासपुर (छ.ग.) बिलासपुर संभाग

(2)

WRIT PETITION UNDER ARTICLE 226 /227 OF THE CONSTITUTION OF INDIA. FOR ISSUNCE OF APPROPRIATE WRITS / ORDERS AND DIRECTION

HIGH COURT OF CHHATTISGARH : BILASPUR

WRIT PETITION NO. 85 OF 2005

Suraj Lal Daheriya

Vs.

State of Madhya Pradesh & Others

O R D E R
(Dated 17th January, 2006)

HIGH COURT OF CHHATTISGARH : BILASPUR

WRIT PETITION NO. 85 OF 2005

Suraj Lal Daheriya

Vs.

State of Madhya Pradesh & Others

Present :- Mrs. Anju Ahuja, counsel for the petitioner.

Shri Yashwant Singh, Govt. Advocate and Shri A.S. Kachhawaha, Dy. Govt. Advocate for the State of Chhattisgarh.

O R D E R
(Dated 17th January, 2006)

Per Hon'ble Shri Fakhruddin, J

Heard.

2. By this petition under Article 226/227 of the Constitution of India the petitioner challenges the suspension order dated 26-6-2002 (Annexure-P/5).

3. Learned counsel for the petitioner submits that the petitioner was appointed as Sub Engineer (Civil) vide order dated 27-8-1984 (Annexure-P/1). She further submits that the petitioner was posted in the office of Executive Engineer, Bargi, Canal Division, Narsinghpur and thereafter also posted at various places from time to time. She also submits that the petitioner was selected for Class-II grade of Sub Engineers vide order dated 2-5-1999 (Annexure-P/2). Learned counsel submits that when the petitioner was posted as Sub Engineer, Water Resources Department, Barghat Sub Tahsil, Barghat, District Seoni some complaints were made against the

petitioner and one Dinesh Chandra Agrawal, who was working as Sub Divisional Officer, Water Resources Department, Tahsil Barghat, District Seoni. Learned counsel submits that both the petitioner and Dinesh Chandra Agrawal were suspended by the Commissioner, Jabalpur Division, Jabalpur, vide order dated 6-4-2000 (Annexure-P/3) and the departmental enquiry was initiated. After completing the enquiry vide order dated 16-7-2001 (Annexure-P/4) the Commissioner exonerated them and the petitioner and said Dinesh Chandra Agrawal were reinstated in services. Learned counsel submits that the Police of Police Station Lakhanwada, District Seoni registered an offence under crime No.50/2000 on the basis of a complaint. It was alleged in the said complaint that the total work done worth Rs.85000/- only, instead of Rs.3.21 lakhs. It is submitted that the said valuation has been done by Rural Engineering Services Department without giving due notice to the Water Resources Department and no opportunity was afforded to explain the stand of the Department, however, on the basis of First Information Report the petitioner and Dinesh Chandra Agrawal were once again suspended vide order dated 26-6-2002 (Annexure-P/5). Learned counsel submits that Dinesh Chandra Agrawal challenged the suspension order dated 26-6-2002 (Annexure-P/5) before the State Administrative Tribunal at Jabalpur because at that time the State Administrative Tribunal was functioning and as such the service matters were dealt with by the Tribunal. The case preferred by Dinesh Chandra Agrawal before the Tribunal was registered as O.A.No.310/2003 (***D.C. Agrawal vs. State of***

M.P. and others). The Tribunal disposed of the said matter vide its order dated 7-2-2003 (Annexure-P/6) and quashed the impugned order dated 26-6-2002 (Annexure-A/ 1) being issued by the incompetent authority. It was also observed that the Tribunal's order shall not come in the way of respondents in issuing fresh order, if required, by a competent authority, as per rules. Learned counsel for the petitioner submits that Dinesh Chandra Agrawal pursuant to the Tribunal's order was reinstated and has not been suspended.

4. Learned counsel appearing for the petitioner pointed out that the petitioner was allocated to the State of Chhattisgarh vide order dated 24-10-2002 (Annexure-P/7). It is further contended that subsequently posting orders were issued and he was regularly posted and at no point of time shown as suspended. It is on 28-8-2004 that he is shown to be suspended in view of the information received from the Madhya Pradesh on the basis of order dated 26/6/2002. It is contended that the suspension order dated 26-6-2002 (Annexure-P/5) was quashed by the State Administrative Tribunal vide its order dated 7-2-2003 (Annexure-P/6) by holding that the suspension order was passed by the incompetent authority.

5. Learned counsel for the petitioner raised a contention that the principle of res judiciata apply in full force as the issue has already been adjudicated upon by the competent authority which at the relevant time was exercising the jurisdiction under Article 226 of the Constitution of India. It is

further contended that the action is discriminatory and there cannot be selective suspension.

6. Learned counsel appearing for the State of Chhattisgarh submit that though the Chief Engineer is not a competent authority for issuance of suspension order as he is an authority lower than the appointing authority. He however contended that proviso of Rule-9(1)(b) permits that where the order of suspension is made by an authority lower than the appointing authority, such authority shall forthwith report to the appointing authority, the circumstances in which the order was passed. Learned counsel also submit that the endorsement made goes to show that the information was sent to the Principal Secretary, Water Resources Department, Government of Madhya Pradesh as well as to the Engineer-in-Chief, Water Resources Department, Bhopal, therefore, the suspension order is legal and in accordance with the Rules.

7. Learned counsel for the petitioner on the other hand contended that perusal of the impugned order does not show that this has been passed in the capacity of an authority lower than the appointing authority. At no point of time, the appointing authority ratified.

8. Perused the record. The Chief Engineer passed the order as if he is competent whereas in law he was not competent. This has been held by the Tribunal. The position that the Chief Engineer was not competent is even admitted today. Here the defence taken by the respondents is that even

incompetent officer can suspend, but he has to report about the same to concerned competent authority. However, that was not stand of the respondents before the Tribunal. There is also nothing to indicate that the order of suspension has been passed under the proviso of Rule-9(1)(b). The authority passed the order being the lower authority and did not report the matter for confirmation.

9. So far as the contention that the action is discriminatory and there cannot be selective suspension is concerned, the Apex Court in the case of ***K. Sukhendar Reddy vs. State of A.P. & Another (1999) 6 SCC 257*** in paras 6 & 8 held as under:

> *"6. The appellant was placed under suspension on 6-2-1997 by an order passed by the Chief Secretary to the Government of Andhra Pradesh under sub-rule (1) of Rule 3 till the completion of the disciplinary proceedings against him. This order was subsequently replaced by another order passed on 12-3-1997, in which it was clearly spelt out that disciplinary proceedings against the appellant were not at all contemplated, but since he was involved in Crime Case No.327 of 1996 registered under sections 468, 471, etc. by Anakaplli Town Police Station, he was being placed under suspension. This matter is still under investigation by the CID and a charge sheet has not yet been filed in the case.*
>
> *8. We, therefore, allow this appeal and set aside the suspension order dated 12-3-1997 with the direction that the appellant shall be put back to duty and shall be paid all his arrears of salary up to date minus the suspension allowance, if any, already paid to him, leaving it open to the State Government consider the feasibility of placing the appellant under suspension, if and when a charge-sheet is filed by CID."*

10. From the above, it is apparent that the question that the suspension order has been passed by the Chief Engineer, who

is not competent authority, has already been adjudicated by the State Administrative Tribunal. The order passed by the Tribunal has not been challenged by the authorities any where and even fresh order has also not been passed by the competent authority.

11. Having thus considered the facts and circumstances of the case, material available on record and further the fact that this very order is already adjudicated by the State Administrative Tribunal holding that it was passed by the authority lower than the competent authority, the suspension order dated 26-6-2002 (Annexure-P/5) is quashed. It is made clear that this order shall not come in the way of the respondents in issuing fresh order, if required by a competent authority as per rules.

12. Accordingly, the petition is allowed with costs.

Counsel fee as per scale.

Sd/-
Fakhruddin
Judge

Gowri/H